

Dear VSC VAWA Unit,

Advocates nationwide have been receiving an unusual amount of problematic Requests for Evidence (RFEs) from the Vermont Service Center VAWA Unit (VSC) in the past few months. The AILA VAWA Committee and ASISTA Immigration Assistance created the RFE Project to identify significant evidentiary problems, to ensure that the proper legal standards are followed and to determine areas where the field may need more advice on preparing persuasive applications. To this end, we have surveyed the VAWA and U visa advocacy community and asked that advocates send examples of problematic RFEs they have received.

Below we have included case examples that best illustrate the need for both (1) continued training for adjudicators on the proper evidentiary standards to be applied in VAWA and U visa cases, and (2) improved response from the Vermont Service Center on currently pending problematic RFEs. We believe several of these RFEs also reveal inadequate training on domestic violence, victimization and its contexts, which results in (a) adjudicators not sufficiently valuing evidence that is presented, (b) adjudicators asking for evidence that is not reasonable to require, (c) crime victims waiting longer for decisions on their immigration applications, and (d) NGO service providers' scarce resources being taxed responding to unwarranted RFEs instead of helping new survivors achieve safety. We are additionally very concerned that applicants who are not familiar with our organizational resources may be dissuaded from pursuing legitimate claims because of confusing or unnecessary RFEs.

Correlating to the examples below, please find attached more thorough case summaries identifying names and receipt numbers, and where relevant, case processing status information.

## **I. Problematic RFEs**

### **A. Overlooking Evidence in the Record and Boilerplate RFEs:**

We recognize that VAWA unit adjudicators have a very high caseload; however, we hope to work together with VSC to encourage and explore ways to ensure a careful review of evidence to help alleviate these errors. CIS has agreed in the past that, if an RFE is needed, the adjudicator must: (1) determine what evidence is lacking, and (2) request that evidence.<sup>1</sup> Advocates are continuing to see RFEs that do not go into sufficient detail about why the evidence the applicant provided was insufficient or do not articulate what specific missing details would have satisfied them. Without an explanation for why the evidence is insufficient and what specific evidence is missing, applicants cannot know what will satisfy the agency. Indeed, USCIS, as a matter of policy, discourages boilerplate RFEs as they are extremely vague and do not instruct the advocate which documentation is being requested. Examples of this include:

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<sup>1</sup> USCIS Field Adjudicator's Manual, Chapter 10.5 "Requesting Additional Information" (updated July 7, 2011).

- One RFE in a U visa case asked for more evidence of substantial abuse with stock language that was irrelevant to the case. (See attachment, ICWC RFE 3);
- One RFE said the I-918 Supplement B Certification has expired, where the receipt notice clearly shows that VSC received the U filing before the certification expired. (See attachment, ICWC RFE 9);
- One RFE asked for a copy of a marriage certificate for an I-918 Supplement A application, which was submitted as part of the initial filing. (See attachment, ASISTA 1);
- One RFE in a U visa adjustment case asking for an affidavit of continuous presence when one was submitted. (See attachment, ASISTA 2); and
- One RFE for a VAWA case that states that no evidence of joint residence was submitted when a lease agreement showing joint residency was included. (See attachment, ASISTA 4 and ASISTA 14).

**B. Applying an improper legal or evidentiary standard: Declarations and Support Letters**

Advocates also report seeing RFEs that have posed an improper requirement regarding declarations. For example:

- One RFE requests evidence that the author of a letter of support is a “licensed therapist” when she noted on the letter that she has been a domestic violence advocate for 18 years. (See attachment, ICWC RFE 6);
- RFEs asking for a photocopy of the full translation of a personal statement that was submitted in English but with a notarized signature page from the client, indicating that contents of the statement had been translated to her into Spanish (her native language) and swearing to the veracity of its contents. (See attachments, ASISTA 3, ASISTA 5 and ASISTA 12); and
- RFE requesting a full translation of a foreign birth certificate into English where the client submitted summary translation of all relevant information (See attachment, ICWC 7).

**C. Applying the proper legal or evidentiary standard: Any credible evidence**

RFEs on good faith marriage continue to emphasize commingling of assets and similar indicia of shared resources, requirements that must be derived from the regular family-based context. Those trained in domestic violence are aware that abusers often use economic control; insisting on documents that abusers control indicates to us lack of training on domestic violence and unfamiliarity with the any credible evidence standard. NONE of the RFEs we are seeing mention the totality of the circumstances test. In many instances, we believe the adjudicator would have approved if he or she had examined the evidence as a whole instead of picking apart each piece of evidence and determining that it, alone, didn't meet the preponderance standard.

1. Examples of the “any credible evidence standard” with regard to good faith marriage include:

- One RFE in a VAWA case asked for more evidence regarding joint residence (among other issues) without reference to *all* the evidence submitted to meet this requirement and why it was not sufficient, taken in totality of the circumstances. (See Attachment ASISTA 6);
- One RFE in an I-751 Abused spouse waiver case which seems to be requiring evidence of shared assets and liabilities. (See Attachment ASISTA 7); and
- One RFE in a VAWA case sought more evidence for good faith marriage without acknowledging the entirety of the evidence submitted. (ASISTA 13).

2. Examples of an inappropriate **substantial harm standard** include:

- An RFE asking for more information to demonstrate substantial harm where client was shot and suffered a bullet wound. Despite multiple attempts at communication with the VAWA hotline at VSC for this egregious RFE, one day after the RFE was due, VSC told the advocate to respond to the RFE. (See attachment, ICWC RFE 10);
- RFEs asking for more evidence of substantial harm or battery/extreme cruelty evidence when supporting letters (including one from the police), an emergency protective order and photos of injuries were submitted, but the RFE discounted the photos because they were not taken by police or a hospital. (See attachment ASISTA 8);
- One RFE, asking for more information on substantial harm, stated: “He started shaking you and would not allow you to walk away. You indicate that he then threw you down on the bed and choked you. You indicate that you thought you were going to die. At that point the police arrived and pulled him off you...Your letter from XXX Ph.D. indicates

that you are suffering from PTSD as a result of the qualifying crime...As her diagnosis is based largely on your description of the severity of abuse that occurred on the date in question, her testimony will be given less weight in the adjudication of this petition. As such USCIS is unable to determine if you suffered substantial physical or emotion abuse as a result of the qualifying criminal act.” (See attachment, ASISTA 9);

- One RFE asked for more evidence of substantial harm where the applicant was punched in the face while pregnant and got a bloody nose, received multiple death threats multiple times, and suffered mental abuse as provided in her declaration and her caseworker’s support letter. (See attachment, ICWC RFE 5);
- One RFE asked for more evidence of substantial harm where the applicant was choked to the point of losing consciousness, supported among other things, by a therapist letter diagnosing her with PTSD and Depressive Disorder. (See attachment, ICWC RFE 3);
- One RFE asked for more evidence of substantial harm of domestic violence where the applicant underwent a 16-year marriage filled with domestic violence that ended when her husband choked and threatened to kill her, and subsequently he committed suicide. (See attachment, ICWC RFE 11);
- One RFE asked for more evidence of substantial harm where the applicant was hit several times in the face and head, lost consciousness and suffered a concussion. He included among other evidence, his hospital record. (See attachment, ICWC RFE 4); and
- One RFE asked for more specific evidence of substantial harm where the applicant already submitted a police report, her statement, an emergency protective order, and a letter from an experienced domestic violence advocate. (See attachment, ICWC RFE 6).

**3. Examples of problematic RFEs on helpfulness include:**

- One RFE requested more evidence of helpfulness in a U visa case in which the applicant submitted a Supplement B, Statement of charges and a Statement of Probable Cause against the perpetrator citing the applicant’s testimony, a State’s Attorney Witness list showing the applicant and her three children as witnesses, personal statements and letters to the Court. (See attachment ASISTA 10);
- One RFE asked for more helpfulness evidence where the victim submitted the following: Signed I-918B, personal statement, and a support letter from the CPS social worker. (See attachment, ICWC RFE 5);

- One RFE asked for more helpfulness evidence where the victim submitted the following: the signed I-918B, a personal statement, a restraining order and notes of helpfulness in a police report. (See attachment, ICWC RFE 9); and
- One RFE claimed that the person who signed the certification is not a designated official, while in fact the signer, Los Angeles Police Department’s Detective K. Carranza, has signed 100s of U visa certifications. (See attachment, ICWC RFE 9).

#### 4. The “any credible evidence standard” with regard to inadmissibility

Contrary to USCIS policy (as articulated on the September 2012 Stakeholder Call), advocates are reporting frequent RFEs for arrest records to support inadmissibility waiver arguments, in addition to already submitted court dispositions. When identifying and providing documents on inadmissibility, applicants are only legally required to provide the dispositions, not arrest records or other documents that go beyond the record of conviction. We realize background information may be relevant in other instances—proving good moral character for VAWA self-petitions, for instance—but we believe adjudicators are not aware that they are legally prohibited from “looking behind the record” when determining if an inadmissibility ground has been triggered. Here are some examples:

- One RFE asked for arrest reports and a final disposition where the applicant already submitted the police department certificate of release that confirmed that the taking into custody was only a detention, not an arrest. (See attachment, ICWC RFE 1);
- One RFE asked for arrest and incident reports where the dispositions and law excerpts were already submitted. USCIS later approved this case without the reports. (See attachment, ICWC RFE 2);
- One RFE asked for information about a DUI that the applicant did not commit (See attachment, ICWC RFE 12); and
- One RFE for a VAWA case was issued because the criminal history check was not signed or certified which is not required under 8 CFR 204.2(c)(2)(v). (See attachment ASISTA 11).

## II. Suggestions

The solution to improving RFE problems is two-fold: ensuring practitioners present their evidence clearly and explain how it meets the evidentiary standards; and enhancing adjudicators training and supervision until their RFEs comport with the correct standards of proof.

Furthermore, advocates need ways to efficiently communicate with the VSC when problems with RFEs arise. To that end, we recommend:

### **A. Additional Adjudicator Training**

We understand that there is a group of new adjudicators who are new to the VAWA Unit and proper training is essential to prevent the issuance of these problematic RFEs which create delays for both the Vermont Service Center as well as for advocates and ultimately survivors who are in need of protection. We encourage the VAWA/U/T unit to evaluate any gaps in their training material for new adjudicators, specifically addressing:

- the dynamics of domestic violence (DV), including how economic control often eliminates the “best evidence” option for proving residence and good faith marriage;
- the kinds of substantial harm suffered by sexual assault victims and other crime survivors;
- a review the 1998 INS Memoranda issued by Paul Virtue recognizes that battered VAWA self-petitioners are not likely to have access to the range of documents available to the ordinary visa petitioner for a variety of reasons, and especially as related to the abuse they have suffered.<sup>2</sup> Though written before Congress created the U visa, the same principles hold true for U visa adjudications;<sup>3</sup>
- how the any credible evidence approach plays out in all aspects of VAWA and U proof, including standards for declarations, good faith marriage, public interest waivers and substantial harm; and
- a review the intent of Congress, including Congress’ delegation to law enforcement to determine what’s helpful.

### **B. RFE Review Project**

In April 2010, USCIS launched the RFE Project, “an initiative to review and revise our Service Center RFE templates. Through continuous engagement with USCIS stakeholders, this project is producing RFE templates that are, clear and concise, consistent across USCIS service centers, relevant for the classification being adjudicated; an adaptable to the facts and needs of individual cases.”<sup>4</sup>

An example of a very good template used in the VAWA context is the list of factors for showing extreme cruelty. Some of the other apparent template language is more problematic however,

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<sup>2</sup> Virtue, Office of the General Counsel, “Extreme Hardship” and Documentary Requirements Involving Battered Spouses and Children, Memorandum to Terrance O’Reilly, Director, Administrative Appeals Office, INS mem. HQ 90/15-P, HQ 70/8-P (Oct. 16, 1998). *See also* 8 CFR §§ 103.2(b)(2)(iii) and 204.1(f)(1)

<sup>3</sup> See 8 CFR 214.14(c)(4).

<sup>4</sup> USCIS. Review and Revision of Request for Evidence Templates. Available at <http://1.usa.gov/aA14pN>

such as that demanding commingling of assets for VAWA good faith marriage. We suggest a special conference call to collectively review and assess what appear to be templates in VAWA and U RFEs.

## **B. Individual response to problematic RFEs**

While we agree that, procedurally, all RFEs require a timely response, we encourage USCIS to institute ways to more quickly resolve egregious problems with RFEs. This is especially important for applicants who may not be party to our conversations and therefore are unaware that you know some RFEs may be inaccurate. Rather than deter legitimate applicants from pursuing relief despite difficult RFEs, we suggest some interim measures that might prevent this result:

1. **Supervisors should review new adjudicator RFEs for a longer time period** before they are allowed to issue RFEs on their own;
2. When advocates contact the hotline for supervisory review of a particularly problematic or egregious RFE, it would be helpful if the Hotline could **provide the advocate a reasonable time frame for the review to occur so that the practitioner knows whether he or she will either need to continue to work on a response or whether the RFE will be withdrawn.**
3. **The AILA VAWA Committee and ASISTA will continue to collect RFEs from the field to the send the Hotline** and request review to potentially retract some problematic RFEs. In turn, we welcome the practice pointers for the field to make sure they are effectively and efficiently preparing their clients applicants and communicating with VSC.

## **Conclusion**

We look forward to continuing this dialogue regarding RFE issues in an effort to best assist immigrant survivors of violence. As experts in the field, we are happy to work with USCIS on training issues (for both the field and CIS adjudicators). We will continue to compile background materials illustrating systemic problem as they arise. We welcome the opportunity to work with you to ensure all legitimate VAWA and U applicants present the best applications they can and receive the most thoughtful adjudications possible.